

**PHARMACY EXAMINING BOARD
APRIL 14, 2005
MEETING MINUTES**

PRESENT: Michael Bettiga, R.Ph.; John Bohlman, R.Ph.; Cynthia Benning, R.Ph.; Georgina Forbes, Fred Moskol, R.Ph.; Charlotte Rasmussen; Susan Sutter, R.Ph.

STAFF: Tom Ryan, Bureau Director; William Black, Legal Counsel; Roxanne Peterson, Direct Licensing Coordinator

GUESTS: Rich Verschay, R.Ph.; Tom Engels, PSW; Todd Richmond, Associated Press, Gilkey Stevenson, DPH3, Matthew Gumm, DPH3; Katie Kule, DPH3; Reiisa Kotters, DPH3; Lindsey Ellison, DPH4; Jack Monroe, Target; Darrin Wirkes, Target; Lynnette Priebe, VA Milwaukee/PSW Tech Bd.; Joylyn Richter, Marshland Pharmacies; Ralph Lang; Franklin LaDien, Walgreens; Chi Phung, Walgreens; Aaron Bailey, Creighton University; Jamie Statz Paynter, Dean Pharmacy, Greg Weber, M.S., R.Ph., Aurora Health Care

CALL TO ORDER

Chair Michael Bettiga called the meeting to order at 9:00 a.m. A quorum was confirmed.

MOTION: Fred Moskol moved, seconded by John Bohlman, to approve Rich Verschay's attendance in Closed Session. Motion carried unanimously.

APPROVAL OF AGENDA

Additions:

- MPJE Item Writing Workshop – Appointment of Board Representatives
- Automated Dispensing
- Board Representative to Speak to Jurisprudence Class at UW-SOP
- Business Items at NABP Conference
- Screening Panel Issue re: Drug Theft and Loss

MOTION: Charlotte Rasmussen moved, seconded by Cynthia Benning, to approve the agenda as amended. Motion carried unanimously.

APPROVAL OF MINUTES OF FEBRUARY 8 & 9, 2005

Amendments to the Minutes:

- Page 2 of 12, under Appointments, add Pharmacy Advisory Council – John Bohlman, Sue Sutter
- Page 7 of 12, last sentence on page, change "HSS" to "HHS".

- Page 11 of 12, under John Schmitt, change “Davies” to “Darvocet”.
- Page 12 of 12, change the next meeting date from 2/9/05 to 4/13/05.

MOTION: Georgina Forbes moved, seconded by John Bohlman, to approve the minutes as amended. Motion carried unanimously.

PRESENTATION OF STIPULATIONS

HAUPER PHARMACY

Michael Berndt, Division of Enforcement, appeared before the Board to present the Stipulation in the matter concerning Hauper Pharmacy.

GERALD HANCOCK

Michael Berndt, Division of Enforcement, appeared before the Board to present the Stipulation in the matter concerning Gerald Hancock.

ADMINISTRATIVE REPORT

Appointment of Secretary

Tom Ryan reported that the Governor has appointed Celia Jackson as Secretary of the Department. She will begin her duties on April 25, 2005.

Building Renovation Update

Tom Ryan reported that the building renovation project is in progress.

Budget Report

Tom Ryan reported on the Governor’s budget proposal and initiatives that impact the Department and the Board. The proposed initiatives include:

- Consolidating the human resources and payroll functions in agencies our size
- Consolidating the IT server positions
- Consolidating the attorneys in DOE and Legal Services into an enterprise-wide law firm located in the DOA.

MOTION: John Bohlman moved, seconded by Cynthia Benning, to authorize Sue Sutter to write a letter, on behalf of the Board, to the co-chairs of the Joint Finance Committee expressing the Board’s concerns regarding the decrease of attorney services and the inefficiencies imposed upon the Board by this consolidation. Motion carried unanimously. Fred Moskol abstained.

ADMINISTRATIVE RULES PUBLIC HEARING – PHAR 6.09

A public hearing was held regarding Phar 6.09, Wis. Admin. Code, relating to emergency pharmacy relocations. Tom Engels, Pharmacy Society of Wisconsin, presented testimony.

The Board reviewed the Clearinghouse Report. William Black, Legal Counsel, summarized on his responses to the Report.

MOTION: Sue Sutter moved, seconded by Charlotte Rasmussen, to submit the proposed draft language as a statute change to the Legislature. The Board authorized Sue Sutter to work with the Pharmacy Society of Wisconsin on initiating legislation. Motion carried unanimously.

SUMMARY REPORTS ON PENDING COURT CASES, DISCIPLINARY CASES, ADMINISTRATIVE RULES AND LEGISLATION

Phar 6.08, Wis. Admin. Code – Alarm System Variance

Tom Ryan reported that he met with the Small Business Review Advisory Committee to respond to questions relating to the proposed rule's effects on small business. Mr. Ryan also reported that the proposed rule is in the promulgation process.

Phar 7.05, Wis. Admin. Code – Prescription Transfer

The Board reviewed the latest draft of proposed Phar 7.05 and proposed some language revisions.

MOTION: John Bohlman moved, seconded by Sue Sutter, that Bill Black redraft the proposed language, incorporating the Board's revisions and send the redraft to the Clearinghouse. The Board requested that Sue Sutter review the draft before it goes to the Clearinghouse. Motion carried unanimously.

DEA THEFT AND LOSS REPORT

Eric Callisto, DOE Administrator, met with the Board to discuss the DEA theft and loss report. Mr. Callisto reported that the DEA will be preparing and sending the reports in the future.

The Board discussed the Screening Panel members' concerns that Phar 8.02(3)(f), Wis. Admin. Code, reads "any" loss and is inconsistent with the DEA rule which reads "significant" loss.

MOTION: Fred Moskol moved, seconded by John Bohlman, that a Scope Statement be prepared to revise Phar 8.02(3)(f) to be consistent with the federal rule by changing "any" loss to "significant" loss. Motion carried unanimously.

**VARIANCE REQUEST (DELIVERY) – ROUNDY’S INC., PICK-N-SAVE PHARMACY
#6371 – DOUGLASS BERRY – MILWAUKEE, WI**

Douglas Berry, appeared before the Board to discuss Roundy’s Inc., Pick-n-Save Pharmacy #6371 request for variance relating to a prescription delivery program.

MOTION: Cynthia Benning moved, seconded by Charlotte Rasmussen, to approve Roundy’s Inc., Pick-N-Save Pharmacy #6371 variance request with the following provisions: (1) The pharmacy must electronically submit a copy of the plan with the changes discussed to Bill Black; (2) The pharmacy cannot deliver any Schedule II drugs; and (3) On April 1, 2006, Douglass Berry must submit a report to the Board. Motion carried unanimously.

**VARIANCE REQUEST (PROFESSIONAL SERVICE AREA) – TRUE BOTANICA, INC.
KATHLEEN HARTNETT, R.PH. – DELAFIELD, WI**

MOTION: Cynthia Benning moved, seconded by Georgina Forbes, to grant a variance to True Botanica, Inc., but impose a limitation on the license that the pharmacy practice be limited to homeopathic dispensing (compounded or otherwise) so long as the practice is carried out at the site with only 187 square feet. Motion carried unanimously.

**VARIANCE REQUEST (DELIVERY) – COMMUNITY PHARMACY
ROBERT UMHOEFER, RPH – RACINE, WI – APPEARANCE**

Robert Umhoefer appeared before the Board to discuss the Community Pharmacy variance request relating to a prescription delivery program.

MOTION: Sue Sutter moved, seconded by Fred Moskol, to approve Community Pharmacy’s variance request with the following provisions: (1) The pharmacy must electronically submit a copy of the plan with the changes discussed to William Black. (2) The pharmacy cannot deliver any Schedule II drugs. (3) The pharmacy must have a locked cabinet or other means of security for the drugs. (4) The transfer of prescription drugs can only be done by the agent. (5) On April 1, 2006, Robert Umhoefer must submit a report to the Board. Motion carried unanimously.

**VARIANCE REQUEST – RIVER FALLS AREA HOSPITAL
SCOTT ERICKSON – RIVER FALLS, WI**

MOTION: Cynthia Benning moved, seconded by John Bohlman, that Legal Counsel draft a response to Scott Erickson advising that there are 2 options: (1) The pharmacist in Minnesota must be licensed in Wisconsin; or (2) An agency relationship between St. Francis Hospital located in Shakopee, MN and the managing pharmacist at the River Falls Area Hospital be established with them having responsibility for the dispensed product. Motion carried unanimously.

**VARIANCE REQUEST – GROUP HEALTH COOPERATIVE – HATCHERY HILL
PHARMACY – LAURIE M. FLAGEL – FITCHBURG, WI**

MOTION: Sue Sutter moved, seconded by John Bohlman, to approve Group Health Cooperative's request to add the Hatchery Hill Pharmacy, Fitchburg, to the variance for a common central processing unit which was approved at the October 13, 2004 Board meeting. Motion carried unanimously.

**LEGISLATIVE LIAISON REPORT
LEGISLATIVE PROPOSALS AND ACTIVITY**

SB 78 and AB 183 - Methamphetamine Proposals

These bills relate to pseudoephedrine hydrochloride and other materials used to produce methamphetamine and the distribution of methamphetamine to minors. Tom Engels, PSW, reported that both bills are available for scheduling in the Assembly and Senate.

2005 AB 213

The Board received a copy of the bill which relates to termination of parental rights on the grounds of manufacturing methamphetamine with a child of the person whose parental rights are sought to be terminated present.

2005 SB 109 – Expanding the Cancer Drug Repository Program

Cynthia Benning reported that she testified at the hearing regarding expanding the cancer drug repository program to include prescription drugs and supplies for chronic disease. Ms. Benning advised that this bill has passed out of the Committee's executive session.

2005 AB 207

The Board received a copy of the bill which relates to employment discrimination based on creed; and exemption from liability and discipline for health care professionals and health care facility employees who refuse to participate in sterilization, abortion, assisted suicide, and other procedures on moral or religious grounds.

2005 AB 258 – Drug Product Equivalents

The Board discussed this bill which relates to prescription drug equivalents.

MOTION: Fred Moskol moved, seconded by Cynthia Benning, to authorize Sue Sutter to communicate to the legislative committee that the bill language should be kept at "may" rather than "shall" and to substitute the word "generic" drug for "therapeutic" drug. Motion carried unanimously.

2005 AB 269 – Prescription Drug Labels

The Board discussed this bill which relates to prescription drug labels. Cynthia Benning reported that a public hearing has not been scheduled as of this date.

MOTION: Sue Sutter moved, seconded by Georgina Forbes, to authorize John Bohlman to testify on behalf of the Board at the public hearing. Motion carried unanimously.

2005 AB 48

The Board received a copy of this bill which relates to the use of, and possession with intent to use, certain drug paraphernalia.

2005 SB 155 and AB 285

The Board received a copy of these bills which relate to employment discrimination based on creed and exemption from liability and discipline for pharmacists who refuse to dispense for abortions, assisted suicides and euthanasia.

AUTOMATED DISPENSING

Update on Rules and/or Legislation Status

Sue Sutter and William Black will report to the Board on rules and legislation at the June 2005 meeting.

Beaver Dam Community Hospital Notification

The Beaver Dam Community Hospital notified the Board of the installation of automated medication dispensing machines. No Board action necessary.

DEA INTERIM POLICY STATEMENT – CORRESPONDENCE AND DISCUSSION

Informational item.

REGULATORY DIGEST – STATUS

Sue Sutter reported that the Digest has been published on the DRL web site.

By consensus, the Board requests that when renewal notices are sent to licensees that an informational piece be included advising the licensees that the Digests are now published on the web.

PATIENT CONSULTATION EXAMINATION SUBCOMMITTEE REPORT

Cynthia Benning reported on the Patient Consultation Examination Sub-Committee (representatives from the Board and pharmacy schools) meeting held April 11, 2005.

MOTION: Fred Moskol moved, seconded by Georgina Forbes, authorize Cynthia Benning to be in a position to convene subsequent meetings of the Patient Consultation Exam Sub-Committee so that it can complete its charge and report back to the Board with recommendations. Motion carried unanimously.

MEDICARE ELECTRONIC PRESCRIBING RULES REVIEW

Bill Black clarified the CMS Medicare and Medicaid electronic prescribing proposed rules.

The Board received a copy of William Black's March 17, 2005 memo, relating to CMS Medicare and Medicaid electronic prescribing proposed rules regarding the question of pre-emption of Wis. Admin. Code s. Phar 7.08.

VOTING AT THE NABP ANNUAL MEETING

MOTION: Sue Sutter moved, seconded by Cynthia Benning, to authorize John Bohlman to vote the conscience of the Board at the NABP annual meeting. Motion carried unanimously.

PRACTICE QUESTIONS

NeighborCare Pharmacy – Michele Schuster – Kegler, Brown, Hill & Ritter – Columbus, OH

The Board discussed Michele Schuster's questions relating to developing an after-hours centralized on-call center for its pharmacy operation. William Black will respond on behalf of the Board.

Hospital Drug Warehousing – Cardinal Health – Carole Culotta

The Board discussed Carole Culotta's questions relating to licensing requirements for an off-site warehouse. William Black will respond on behalf of the Board.

Midelfort Pharmacies – Records for Scanned Prescriptions – Ryan Gunderson, PharmD

The Board deferred discussion of Ryan Gunderson's inquiry until the June 2005 meeting. Mr. Gunderson asked if a physician's order is scanned into the pharmacy prescription database, does the pharmacy need to keep the original paper hardcopy on file?

WISCONSIN PHARMACY FORUM REPORT – SUE SUTTER

Sue Sutter reported that the minutes are being prepared and Ms. Sutter will forward the report to Tom Ryan for distribution to the Board.

**FOREIGN GRADUATE INTERNSHIP REQUIREMENTS
NABP STATUS REPORT RE: FPGEC**

Sue Sutter suggested that this issue be deferred to the June 2005 meeting so that the Board members have an opportunity to review the materials from NABP relating to the problems NABP has encountered with the documents received from foreign graduates.

Ms. Sutter asked that at the next meeting the Board address a possible change to Phar 17 relating to foreign graduates and internship. Sue Sutter and Kris Hendrickson will prepare a document listing the problems they are dealing with when they review the foreign graduate applications.

SPEAKING ENGAGEMENT - DPH2 JURISPRUDENCE CLASS AT UW-SOP

MOTION: Sue Sutter moved, seconded by Cynthia Benning, to authorize Michael Bettiga or his delegate to speak on behalf of the Board at the UW-SOP session. Motion carried unanimously.

**PSW EDUCATIONAL CONFERENCE QUESTION AND ANSWER REVIEW – PAIN
MANAGEMENT AND REGULATORY ISSUES**

MOTION: Charlotte Rasmussen moved, seconded by Cynthia Benning, to authorize Sue Sutter and William Black to represent the Board at the PSW Educational Conference on April 29, 2005, to assist Dr. Gilson in fielding questions. Motion carried unanimously.

LICENSING LIAISON REPORT

The Board received a copy of the Licensing Liaison Report and the lists of newly licensed pharmacists and pharmacies.

MPJE ITEM WRITING WORKSHOP

The NABP Item Writing Workshop for the Multistate Pharmacy Jurisprudence Exam is scheduled for June 3-5, 2005, in Mt. Prospect, IL.

MOTION: Sue Sutter moved, seconded by Cynthia Benning, that Tom Ryan check with the Secretary's office to see if the Board members would be allowed to meet, prior to June 8, for a half day to prepare 30 questions on the new rules which will be submitted to NABP. The alternative would be to have John Bohlman attend the workshop in Mt. Prospect. Motion carried unanimously.

INFORMATIONAL ITEMS

DEA Letter dated March 18, 2005, re: Final rule change to its existing regulations to allow, where state laws permit, a retail pharmacy to install and operate automated dispensing systems at long term care facilities. Noted.

CLOSED SESSION

MOTION: Sue Sutter moved, seconded by Fred Moskol, to convene to closed session to deliberate on case(s) following hearing (Wis. Stat. § 19.85 (1) (a)); consider closing disciplinary investigation(s) with administrative warning(s) (Wis. Stat. § 19.85 (1) (b) and 440.205); to consider individual histories or disciplinary data (Wis. Stat. § 19.85 (1) (f)); and to confer with legal counsel (Wis. Stat. § 19.85 (1) (g). Roll Call Vote: Charlotte Rasmussen-yes; Sue Sutter-yes; John Bohlman-yes; Cynthia Benning-yes; Fredric Moskol-yes; Georgina Forbes-yes; Michael Bettiga-yes; Motion carried unanimously.

The Board convened into Closed Session at 2:25 p.m.

RECONVENE TO OPEN SESSION TO VOTE ON ITEMS DELIBERATED ON IN CLOSED SESSION

MOTION: John Bohlman moved, seconded by Sue Sutter, to reconvene into open session. Motion carried unanimously.

The Board reconvened into Open Session at 4:45 p.m.

CONSIDERATION OF CASE CLOSINGS – CASE 04 PHM 049

MOTION: John Bohlman moved, seconded by Sue Sutter, to close case 04 PHM 049 for insufficient evidence. Motion carried unanimously.

CONSIDERATION OF CASE CLOSINGS – CASE 04 PHM 072

MOTION: John Bohlman moved, seconded by Cynthia Benning, to close case 04 PHM 072 for insufficient evidence. Motion carried unanimously.

STIPULATIONS

Neil T. Noesen, RPH, St. Paul MN

MOTION: Cynthia Benning moved, seconded by Fred Moskol, to accept the proposed decision and order in the matter of the disciplinary proceedings against Neil T. Noesen. Motion carried unanimously. John Bohlman, Case Advisor, was not present during Closed Session discussion and abstained from the vote.

Hauper Pharmacy, Union Grove, WI

MOTION: Sue Sutter moved, seconded by Cynthia Benning, to accept the Stipulation, Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Hauper Pharmacy. Motion carried unanimously.

Gerald D. Hancock, RPH, Union Grove, WI

MOTION: Charlotte Rasmussen moved, seconded by Cynthia Benning, to accept the Stipulation, Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Gerald D. Hancock. Motion carried unanimously.

DOE MONITORING ISSUES

Lance Lundstad, RPH – Request for Reinstatement of Three-Month Stay

MOTION: Cynthia Benning moved, seconded by John Bohlman, to reinstate Lance Lundstad's original order including screenings and counseling effective April 13, 2005. Motion carried unanimously.

Gerald Jennings, RPH– Request for Three-Month Stay and Modifications

MOTION: John Bohlman moved, seconded by Fred Moskol, that Gerald Jennings' license be suspended until Mr. Jennings submits three witnessed, clean urine reports and provides the name of his supervising pharmacist, and, that the supervising pharmacist and Mr. Jennings submit the controlled substances reports to the DRL monitor. Mr. Jennings can then go back to the stay and modifications now in place until the June 2005 meeting at which time Mr. Jennings must appear before the Board. Motion carried unanimously.

William Karwoski, RPH– Request for Three Month Stay and Modifications

MOTION: Sue Sutter moved, seconded by Charlotte Rasmussen, to grant William Karwoski a three-month stay and to deny his requests for modification. Motion carried unanimously.

Kevin Pampuch, RPH – Request for Three Month Stay with Modifications

MOTION: John Bohlman moved, seconded by Charlotte Rasmussen, to grant Kevin Pampuch a three-month stay with modifications. Motion carried unanimously.

Andrew Rice, RPH – Request for Three Month Stay with Modifications

MOTION: Georgina Forbes moved, seconded by Cynthia Benning, to grant Andrew Rice a three-month stay with modifications. Motion carried unanimously. Michael Bettiga abstained.

John Schmitt, R.Ph. – Request for Three Month Stay with Modifications

MOTION: Cynthia Benning moved, seconded by Georgina Forbes, that John Schmitt's license be suspended and that Mr. Schmitt submit 3 witnessed, clean urine reports and provide the name of his supervising pharmacist, and, that the supervising pharmacist and Mr. Schmitt submit the controlled substances reports to the DRL monitor. Mr. Schmitt must appear before the Board at the June 2005 meeting. Motion carried unanimously. Michael Bettiga abstained.

REVIEW OF MONITOR – CHARLES ENGEL

Deferred to June 2005 meeting.

DIVISION OF ENFORCEMENT - CASE STATUS REPORT/CASE CLOSINGS

Noted.

VALIDATION OF EXAM SCORES

MOTION: Fred Moskol moved, seconded by John Bohlman, to validate the exam scores of April 12, 2005. Motion carried unanimously.

ADJOURNMENT

MOTION: Sue Sutter moved, seconded by Fred Moskol, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 5:05 p.m.

Next Meeting: June 22, 2005